

MINNESOTA SENTENCING GUIDELINES COMMISSION
SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES
August, 1997

ADOPTED MODIFICATIONS EFFECTIVE AUGUST 1, 1997

- The Commission adopted the proposal to clarify how to determine the severity level for convictions for Crimes Committed for Benefit of a Gang by adding language to Section II.A. Offense Severity that deals with determining severity levels:
- A. Offense Severity: The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. For persons convicted under Minn. Stat. § 609.229, subd. 3 (a) - Crime Committed For Benefit of a Gang, the severity level is the same as that for the underlying crime with the highest severity level.
- The Commission adopted the proposal to place or continue to place the following crimes on the Unranked Offense List in Section II.A.03. of the Commentary:
- Cigarette tax and regulation violations - ~~297.12, subd. 1~~ 297F.20
Controlled substance crime in the third degree (aggregated offenses) - 152.023
Interstate compact violation - 243.161
Racketeering, criminal penalties (RICO) - 609.904
Registration of predatory offenders - 243.166, subd. 5
- The Commission adopted the proposal to add language to Section II. B. Criminal History that now only appears in Section II.B.101. of the Commentary regarding how to determine the severity level of prior offenses for purposes of assigning weights for criminal history points:

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight . . .
 - a. The weight assigned to each prior felony sentence is determined . . .

The severity level to be used in assigning weights to prior offenses shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense.

- ➔ **The Commission adopted the proposal to remove the following sentence from Section II.B.102. of the Commentary that is no longer correct:**

***II.B.102.** In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony, or a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. ~~In all other instances of multiple convictions arising from a single course of conduct, where there is a single victim, persons may be sentenced on only one offense.~~ For purposes . . .*

- ➔ **The Commission adopted the proposal to modify Section II. C. Presumptive Sentence and Section II. F. Concurrent/Consecutive Sentences to provide for a presumptive prison sentence that is also presumptive consecutive for all felony assaults committed by an inmate serving an executed prison sentence to correspond with new statutory language that mandates executed, consecutive prison sentences for such assaults:**

C. Presumptive Sentence: The offense of conviction determines . . .

In addition, the presumptive disposition for escapes from executed sentences and felony assaults committed by an inmate serving an executed prison sentence is Commitment to the Commissioner of Corrections ~~and the presumptive duration is determined by the appropriate cell of the Sentencing Guidelines grid, or the mandatory minimum, whichever is longer.~~ It is presumptive for these offenses to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II. F. Presumptive Consecutive Sentences).

F. Concurrent/Consecutive Sentence: . . .

Presumptive Consecutive Sentences

Consecutive sentences are presumptive in the following cases : . . .

Consecutive sentences are presumptive under the above criteria only when the presumptive

disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for escapes from executed sentences or felony assaults committed by an inmate serving an executed prison sentence, however, is always commitment to the Commissioner of Corrections.

***II.F.03.** The presumptive disposition for escapes from executed sentences or felony assaults committed by an inmate serving an executed prison sentence is commitment to the Commissioner of Corrections. It is presumptive for ~~an escape from an executed prison sentence~~ sentences for these offenses to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C..*

➔ **The Commission adopted the proposal to modify Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers to clarify the current policy on the presumptive sentence for attempted offenses when a mandatory minimum applies to the case:**

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense . . . , For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grid cell, whichever is greater. . . .

➔ **The Commission adopted the proposal to make the following modifications to Section III. F. Modifications to clarify when modifications to the Commentary are effective:**

F. Modifications: Modifications to the Minnesota Sentencing Guidelines and associated commentary will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary that relate to clarifications of existing policy will be applied to offenders sentenced on or after the specified effective date.

➔ **The Commission adopted the proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:**

Severity Level VIII

Tampering with Witness, Aggravated First Degree - 609.498, subd. 1b

Severity Level VI

Controlled Substance Crime in the Third Degree (non aggregated offenses) - 152.023

Severity Level IV

Violation of an Order for Protection - 518B.01, subd. 14 (d)

Violation of Restraining Order - 609.748, subd. 6 (d)

- ➔ The Commission adopted the proposal to make the following technical changes to Section V. **OFFENSE SEVERITY REFERENCE TABLE** to correct cites and omissions:

Severity Level V

Tampering with Witness in the First Degree - 609.498, subd. 1a

Severity Level III

Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (2)

Severity Level II

Check Forgery (~~\$200~~ - \$2,500) - 609.631, subd. 4 (3) (a)

Severity Level I

Check Forgery (~~less than \$200~~ \$200 or less) - 609.631, subd. 4 (3) (b)

Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (1)

False Information - Certificate of Title Application - 168A.30

- ➔ The Commission considered the changes made by the 1997 Legislature to the following crimes and adopted the proposal to continue the existing severity level rankings in Section V. **OFFENSE SEVERITY REFERENCE TABLE**, unless otherwise noted above:

Aiding an Offender to Avoid Arrest, Assault 1, Assault 4, Controlled Substance Crimes in the First, Second, Fourth, and Fifth Degree, Fleeing a Peace Officer, Harassment/Stalking, and Motor Vehicle Use Without Consent.

OTHER ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1997,

- The Commission adopted the proposal to place the following inadvertently unranked crime on Unranked Offense List in Section II.A.03. of the Commentary:

Refusal to assist - 6.53

- The Commission adopted the proposal to modify Sections II.B.307. and II.B.407. of the Commentary to clarify that the policy for calculating adult felony criminal history points when circumstances involve a single behavioral incident with multiple victims, also applies to the juvenile and misdemeanor point calculation.

II.B.307. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.

II.B.407. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved and when the findings involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with a finding for purposes of computing criminal history. When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

- The Commission adopted the proposal to modify Section II. B. Criminal History and II.B.402. of the Commentary to clarify that Minnesota felony level offenses that can only be committed by juveniles should be included in calculating juvenile criminal history points.

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that ~~would have been felonies if committed by an adult~~ are felonies under Minnesota law, provided that: . . .

II.B.402. First, only juvenile offenses that would have been felonies if committed by an adult are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross

misdemeanor-type offenses will be excluded from consideration. . . .

- ➔ **The Commission adopted the proposal to modify Section II.B.503. of the Commentary to clarify that Federal felony offenses that have no equivalent or similar offense in Minnesota should be included in the criminal history score.**

II.B.503. *It was concluded, therefore, that designation of out-of-state offenses as felonies or lesser offenses, for purposes of the computation of the criminal history index score, must properly be governed by Minnesota law. The exception to this would be Federal felony crimes for which there is no comparable Minnesota Felony offense. Sentences given for these crimes that are felony level sentences according to Minnesota law shall be given a weight of one point for purposes of calculating the criminal history score.*

- ➔ **The Commission adopted the proposal to place the following crime on the Misdemeanor and Gross Misdemeanor Offense List:**

Malicious Punishment of a Child
609.377

- ➔ **The Commission adopted the proposal to modify certain durations at severity levels III through VI in the Sentencing Guidelines Grid.**

These durational changes at severity levels III through VI were adopted to create a consistent approach to increasing durations across criminal history. Durations at severity levels VII through X already increase at even increments: 10 months for each criminal history point at severity level VII, 12 months at severity level VIII, 15 months at severity level IX, and 20 months at severity level X. The new durations effective August 1 will increase in increments of: 2 months at severity level III, three months at severity level IV, 5 months at severity level V, and 6 months at severity level VI.

The 1996 and 1997 Legislature reviewed these changes to the durations in the Sentencing Guidelines Grid and determined they should be allowed to go into effect but decided to repeal any retroactive application of these changes to persons already sentenced. The provision that provides for retroactive application of changes to the guidelines (Minn. Stat. § 244.09, subd. 11a) was **repealed effective August 1, 1997.**

A copy of the new grid effective for crimes committed on or after August 1, 1997, is attached separately. The specific changes to the Grid are noted below:

IV. SENTENCING GUIDELINES GRID
Presumptive Sentence Lengths in Months

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by- shootings)	X	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	IX	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree</i> <i>Assault, 1st Degree</i>	VIII	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery</i> 1st Degree	VII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i>	VI	21	26 27	30 33	34 33-35 39 37-41	44 42-46 45 43-47	54 50-58 51 49-53	65 60-70 57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	27 28	30 29-31 33 31-35	38 36-40	46 43-49 43 41-45	54 50-58 48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	25 24-26 24 23-25	32 30-34 27 26-28	41 37-45 30 29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	22 21-23 21 20-22	25 24-26 23 22-24
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery</i> (\$200-\$2,500)	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20

OTHER ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1998,

AFTER REVIEW BY THE 1998 LEGISLATURE

- **The Commission adopted the proposal to modify Section II. F. Concurrent/Consecutive Sentences to clarify the permissive consecutive policy regarding current offenses sentenced consecutive to prior offenses:**

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or . . .

Consecutive sentences are permissive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under 1. above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C.

- **The Commission adopted the proposal to modify Section II.F.04. of the Commentary to clarify that it is permissive to give consecutive sentences where there are multiple current felony convictions for crimes involving the same person in a single course of conduct:**

II.F.04. *The Commission's policy on permissive consecutive sentencing outline . . .*

It is permissive for multiple current felony convictions against persons to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. **Presumptive Sentence.** Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.

- ➔ **The Commission adopted the proposal to modify Section III.C. Jail Credit to more clearly establish the rules and principles regarding jail credit supported by case law that are in agreement with the philosophy of the sentencing guidelines:**

C. Jail Credit: Pursuant to Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P.27.03, subd. 4(b), when a convicted felon is committed to the custody of the Commissioner of Corrections, the court shall assure that the record accurately reflects all time spent in custody between arrest and sentencing in connection with the offense, including examinations under Minn. R. Crim. P. 20 or 27.03, subd.1(A), for the offense or behavioral incident for which the person is sentenced, which time shall be deducted by the Commissioner of Corrections from the sentence imposed by subtracting the time from the specified minimum term of imprisonment and if there is any remaining time, subtracting such time from the specified maximum period of supervised release. ~~Time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender committed to the custody of the Commissioner of Corrections shall be included in the above record, and shall be deducted from the sentence imposed. Time spent in confinement under Huber Law (Minn. Stat. § 631.425) shall be awarded at the rate of one day for each day served.~~ Jail credit shall be awarded based on the following criteria:

1. Jail credit for time spent in custody shall not turn on matters subject to manipulation by the prosecutor.
2. Jail credit shall not result in double credit when applied to consecutive sentences.
3. Jail credit shall reflect time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender is committed to the custody of the Commissioner of Corrections. Such credit is limited to time spent in jails, workhouses, and regional correctional facilities.
4. Jail credit shall be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minn. Stat. § 631.425).

Comment

III.C.01. ~~The Commission believes that offenders should receive jail credit for time spent in custody between arrest and sentencing. During that time, the defendant is presumed innocent.~~

~~There is evidence that the poor and members of racial minorities are more likely to be subject to pre-trial detention than others. Granting such jail credit for those receiving executed sentences makes the total periods of incarceration more equitable.~~

In order to promote the goals of the sentencing guidelines, it is important to ensure that jail credit is consistently applied to reflect all time spent in custody in connection with the offense. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that a person in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial. The Commission believes that greater uniformity in the application of jail credit can be achieved by following the general criteria noted above in section III.C. Jail Credit.

III.C.02. Determining the appropriate application of jail credit for an individual can be very complicated, particularly when multiple offenses are involved. While the Commission recognizes the difficulty in interpreting individual circumstances, it believes that the court should award jail credit so that it does not turn on matters that are subject to the manipulation by the prosecutor. The purpose of this criteria is to ensure that if the intent of the court is to give concurrent sentences, the withholding of jail credit does not result in de facto consecutive sentences.

III.C.03. The Commission is equally concerned that if the intent of the court is to give consecutive sentences, the awarding of jail credit should not result in de facto concurrent sentences. Therefore, when applying jail credit to consecutive sentences, credit is only applied to the first sentence in order to avoid awarding double credit. In order to avoid de facto concurrent sentences when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in a prison or jail, no jail credit shall be awarded on the current offense.

III.C.02 04. The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed by means of a departure the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.

~~Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served. When a condition of jail time is that it be served on week ends, the actual time spent in jail rounded to the nearest whole day, should be credited. For example, if an offender arrives at jail at 6:00 p.m. Friday and leaves at 8:00 p.m. Sunday, 50 hours have been served and that time would be rounded to two days of jail credit if the stay were later revoked and the sentence executed.~~

Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities or on electronic monitoring as a

condition of a stay of imposition or stay of execution.

III.C.05. *In computing jail time credit, each day or portion of a day in jail should be counted as one full day of credit. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day. Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served.*

III.C.03 06. *In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall be computed by the Commissioner of Corrections and subtracted from the specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the total sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond. ~~In order to correct this incongruity, computation of projected good time shall be made by the Commissioner of Corrections at time of admission to prison and shall be subtracted from the sentence prior to crediting an offender for time spent in custody.~~